

Internal Revenue Service
memorandum

CC:TL-N-3564-90
Br2:LSMannix

date: FEB 16 1990

to: District Counsel, Jacksonville
Attn: Thomas R. Ascher

SE:JAX

from: Assistant Chief Counsel (Tax Litigation)

CC:TL

subject: [REDACTED]

This responds to your request for Tax Litigation advice, dated February 9, 1990. This case has been continued and is currently under the jurisdiction of Appeals.

ISSUE

Whether the distribution of a % royalty by [REDACTED] ([REDACTED]) to [REDACTED] just prior to the sale of [REDACTED]'s stock to [REDACTED] ([REDACTED]) was, in substance, partial compensation for the sale rather than a distribution with respect to [REDACTED]'s stock.

CONCLUSION

The distribution of the % royalty was, in substance, a distribution with respect to [REDACTED]'s stock.

DISCUSSION

Based on the materials submitted by you, it is evident that [REDACTED] would be able to present a substantial amount of evidence to prove that [REDACTED] had no desire to purchase the % royalty and could not agree with [REDACTED] on its value. The evidence tends to show that the purpose of the distribution was to rid [REDACTED] of an unwanted asset. Thus, this case falls within the parameters of TSN Liquidating Corporation v. United States, 624 F.2d 1328 (5th Cir. 1980), rev'g 77-2 U.S.T.C. ¶ 9741 (W.D. Ky. 1977), and Coffey v. Commissioner, 14 T.C. 1410 (1950), in which the courts held that similar distributions were not, in substance, part of the purchase price of the subsidiary's stock.

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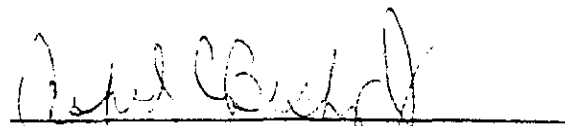
Furthermore, the ■% royalty was not to be paid by ■, the purchaser, but rather by ■ -- and only if the mine realized a profit. Thus, this case is distinguishable from Waterman Steamship v. Commissioner, 50 T.C. 650 (1968), rev'd, 430 F.2d 1185 (5th Cir. 1970), cert. denied, 401 U.S. 939 (1970).

RECOMMENDATION

For the reasons outlined above, we believe this issue should be conceded.

MARLENE GROSS

By:



ALFRED C. BISHOP, JR.
Chief, Branch No. 2
Tax Litigation Division